

1 **FEDERAL ELECTION COMMISSION**  
2  
3 **FIRST GENERAL COUNSEL'S REPORT**  
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5 MUR: 6984  
6 DATE COMPLAINT FILED: Nov. 10, 2015  
7 DATE OF NOTIFICATION: Nov. 17, 2015  
8 DATE OF LAST RESPONSE: Jan. 14, 2016  
9 DATE ACTIVATED: Feb. 24, 2016

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11 ELECTION CYCLE: 2016  
12 EARLIEST SOL: Aug. 18, 2020  
13 LATEST SOL: Aug. 20, 2020  
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15 **COMPLAINANT:** American Democracy Legal Fund

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17 **RESPONDENTS:** John Ellis "Jeb" Bush

18  
19 Jeb 2016, Inc. and William Simon in his official  
20 capacity as treasurer

21  
22 Right to Rise USA and Charlie R. Spies in his  
23 official capacity as treasurer  
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25 **RELEVANT STATUTES** 52 U.S.C. § 30116(a), (f)  
26 **AND REGULATIONS:** 52 U.S.C. § 30125(e)(1)(A)  
27 11 C.F.R. § 109.21  
28

29 **INTERNAL REPORTS CHECKED:** Disclosure Reports  
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31 **FEDERAL AGENCIES CHECKED:** None  
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33 **I. INTRODUCTION**

34 The Complaint in this matter alleges that Right to Rise USA and Charlie Spies in his  
35 official capacity as treasurer ("RTR"), the self-described "leading independent super PAC  
36 supporting Jeb Bush's campaign for President,"<sup>1</sup> made prohibited in-kind contributions to Bush  
37 by coordinating two direct mailings through a common vendor. The Complaint further alleges  
38 that Bush and his principal campaign committee, Jeb 2016, Inc. and William Simon in his

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<sup>1</sup> *Internet Archive, WAYBACK MACHINE, <https://archive.org/web/web.php> (searching for "https://righttorisesuperpac.org").*

1 official capacity as treasurer ("Jeb 2016"), impermissibly accepted RTR's contributions.

2 Respondents deny the allegations.

3 As discussed below, the limited information provided in the Complaint does not appear to  
4 establish that Respondents engaged in conduct that would render the communications  
5 coordinated as a result of the common vendor.

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we recommend that the Commission

8 take no action at this time with regard to the allegations in this Complaint

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10 **II. FACTS**

11 In August 2015, RTR produced and distributed two mail pieces (collectively, the  
12 "Mailers") supporting presidential candidate Jeb Bush.<sup>3</sup> The first mailer ("Iowa Mailer")  
13 featured a picture of Bush flanked by the Cedar Rapids skyline and the words "Why Jeb?"<sup>4</sup> The  
14 reverse side featured a second picture of Bush, two quotes lauding Bush's work as the governor  
15 of Florida, and the words "Jeb" and "Real Conservative Results."<sup>5</sup> It also included a disclaimer

<sup>3</sup> See Compl. at 2 (Nov. 10, 2015). On August 20, 2015, RTR announced via Twitter that it had distributed the Mailers in Iowa and New Hampshire. *Id.* at 3-4.

<sup>4</sup> See *id.*, Ex. A.

<sup>5</sup> *Id.*

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1 stating that it had been paid for by RTR and was not authorized by any candidate or candidate's  
2 committee.<sup>6</sup> According to RTR, the first piece was sent to more than 86,000 recipients in Iowa.<sup>7</sup>

3 The second mailer ("New Hampshire Mailer") featured a picture of Bush, waving to a  
4 crowd on a tree-lined street, with the caption "Why Jeb?"<sup>8</sup> The back of the mailer featured a  
5 picture of Bush, statistics on his work as governor of Florida and the words "Jeb," "Real  
6 Conservative Results," "Jeb will bring fiscal common sense to America," and "It starts in New  
7 Hampshire."<sup>9</sup> It also included a disclaimer stating that it had been paid for by RTR and was not  
8 authorized by any candidate or candidate's committee.<sup>10</sup> RTR stated that the second piece was  
9 sent to more than 150,000 households in New Hampshire.<sup>11</sup>

10 On August 20, 2015, RTR announced via Twitter that it had distributed the Mailers in  
11 Iowa and New Hampshire.<sup>12</sup> RTR acknowledges that its media vendor Redwave  
12 Communications, LLC ("Redwave"), produced the communications,<sup>13</sup> and, at the time the

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<sup>6</sup> *Id.*

<sup>7</sup> *Id.* at 3, Ex. A; *see also* Right to Rise USA, TWITTER (Aug. 20, 2015, 11:28 AM EST), <https://twitter.com/r2rusa/status/634401700346884096> ("IOWA: Check your mailboxes today. Mail piece hitting more than 86k households. #conservativeresultsmatter").

<sup>8</sup> Compl. Ex. B.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> *Id.* at 3-4, Ex. B; *see also* Right to Rise USA, TWITTER (Aug. 20, 2015, 11:30 AM EST), <https://twitter.com/r2rusa/status/634402130728620032> ("NEW HAMPSHIRE: Check your mailboxes today. Mail piece hitting more than 150k households. #conservativeresultsmatter").

<sup>12</sup> Compl. at 3-4.

<sup>13</sup> RTR Resp. at 1 ("[Complainant] cites two RTR mail pieces that were produced by Redwave Communications, LLC") (Jan. 12, 2016).

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1 Mailers were disseminated, it filed an Independent Expenditure Report with the Commission  
2 disclosing \$80,959 in payments to Redwave.<sup>14</sup>

3 The Complaint alleges that RTR coordinated with Bush and Jeb 2016 on the Mailers.  
4 According to the Complaint, the coordination occurred through the use of a common vendor.<sup>15</sup>  
5 Specifically, the Complaint alleges that coordination may have occurred through two political  
6 strategy consultants who worked for Jeb 2106 and had ties to Redwave.

7 First, the Complaint alleges that coordination may have occurred through David Kochel,  
8 described as a “senior strategist” or “chief strategist” for Jeb 2016.<sup>16</sup> The Complaint establishes  
9 Kochel’s connection to Jeb 2016 by identifying two payments of \$25,000 each from Jeb 2016 to  
10 Kochel for “political strategy consulting” in July 2015.<sup>17</sup> Kochel is also the sole owner of  
11 Redwave.<sup>18</sup> The Complaint establishes Kochel’s connection to RTR by identifying RTR’s  
12 payments totaling \$80,959 to Redwave in August 2015 for the Mailers.<sup>19</sup>

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<sup>14</sup> On August 21, 2015, RTR filed a 48-Hour Independent Expenditure Report, disclosing three payments to Redwave for communications supporting Bush disseminated in Iowa and New Hampshire on August 20, 2015. 48-Hour Rpt. of Independent Expenditures, Right to Rise USA (Aug. 21, 2015), <http://docquery.fec.gov/pdf/074/201508219000927074/201508219000927074.pdf#navpanes=0>. RTR reported that it paid Redwave \$23,625.14 on August 18, 2015 for postage and a total of \$57,334.15 on August 19, 2015 for printing. 48-Hour Rpt. of Independent Expenditures, Right to Rise USA (Aug. 21, 2015), <http://docquery.fec.gov/pdf/074/201508219000927074/201508219000927074.pdf#navpanes=0>. See also Compl. at 3. RTR disclosed additional disbursements to Redwave totaling \$104,007 in 2015, for purposes including “direct mail production” and “political strategy consulting.” See Disbursements by Right to Rise USA to Redwave Communications, LLC between Jan. 1, 2015 and Dec. 31, 2015, fec.gov, [https://www.fec.gov/data/disbursements/?committee\\_id=C00571372&two\\_year\\_transaction\\_period=2016&data\\_type=processed&min\\_date=01%2F01%2F2015&max\\_date=12%2F31%2F2015&recipient\\_name=redwave](https://www.fec.gov/data/disbursements/?committee_id=C00571372&two_year_transaction_period=2016&data_type=processed&min_date=01%2F01%2F2015&max_date=12%2F31%2F2015&recipient_name=redwave).

<sup>15</sup> Compl. at 1.

<sup>16</sup> *Id.* at 2.

<sup>17</sup> *Id.*

<sup>18</sup> *Id.* at 2-3.

<sup>19</sup> *Id.*

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1 The Complaint further alleges that coordination may have occurred through a second  
2 individual, Tim Albrecht, whose public relations firm, Albrecht Public Relations, LLC  
3 (“Albrecht Firm”) served as a political strategy consultant for Jeb 2016 while Albrecht was  
4 employed by Redwave.<sup>20</sup> The Complaint identifies payments of \$5,000 from Jeb 2016 to the  
5 Albrecht Firm in July 2015, for “political strategy consulting.”<sup>21</sup>

6 Given Jeb 2016’s employment of Kochel and the Albrecht Firm, and their respective  
7 connections to Redwave, the Complaint argues that Respondents have employed a common  
8 vendor.<sup>22</sup> Moreover, the Complaint alleges that the work that Kochel and the Albrecht Firm’s  
9 did for Jeb 2016 would have made Kochel and Albrecht privy to information about Bush’s  
10 campaign plans that they may have conveyed to RTR through their relationships with  
11 Redwave.<sup>23</sup> The result, according to the Complaint, is that Kochel and Albrecht may have  
12 coordinated on the Iowa and New Hampshire Mailers, and thus RTR may have made an  
13 impermissible contribution to Bush and Jeb 2016, which Bush and Jeb 2016 accepted.<sup>24</sup>

14 RTR, Bush, and Jeb 2016 deny the allegations.<sup>25</sup> Respondents assert that Kochel took a  
15 formal leave of absence from Redwave prior to Bush’s registration as a candidate in June 2015  
16 and that Kochel has not provided consulting services to Redwave or its clients since taking his  
17 leave of absence.<sup>26</sup> Similarly, with respect to Albrecht, Respondents acknowledge that he

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<sup>20</sup> *Id.* at 2.

<sup>21</sup> *Id.*

<sup>22</sup> *Id.* at 1.

<sup>23</sup> *Id.* at 9-10.

<sup>24</sup> *Id.*

<sup>25</sup> RTR Resp. at 1; Jeb 2016 Resp. at 1 (Jan. 14, 2016) (joint response of Jeb 2016 and Bush).

<sup>26</sup> RTR Resp. at 3; Jeb 2016 Resp. at 4. Respondents do not state when Kochel began his leave of absence.

1 "provided consulting services to the [Bush] Campaign through his own firm."<sup>27</sup> Nevertheless,  
2 Jeb 2016 asserts that Albrecht personally worked solely on the "candidate side" of Redwave's  
3 practice and thus would have had no role in the "independent side" services provided to RTR.<sup>28</sup>

### 4 III. LEGAL ANALYSIS

5 The Act prohibits any person from making, and any candidate or committee from  
6 accepting, contributions in excess of the limits stated in 52 U.S.C. § 30116.<sup>29</sup> In addition,  
7 independent expenditure-only political committees are prohibited from making contributions to  
8 federal candidates,<sup>30</sup> and candidates and their authorized committees are prohibited from  
9 accepting "soft money" contributions not subject to the limits and prohibitions of the Act.<sup>31</sup> A  
10 "contribution" includes anything of value given for the purpose of influencing a federal  
11 election.<sup>32</sup> Further, any expenditure made by a person "in cooperation, consultation, or concert,  
12 with, or at the request or suggestion of," a candidate, authorized political committee, or a  
13 national or state party committee is considered an in-kind contribution.<sup>33</sup> These are deemed  
14 "coordinated expenditures."<sup>34</sup>

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RTR states only that "Mr. Kochel is an employee of the [Jeb 2016] Campaign and has been since the Campaign first registered with the Commission," which it did on June 15, 2015. RTR Resp. at 2.

<sup>27</sup> *Id.* at 3; *see also* Jeb 2016 Resp. at 4 ("Although Mr. Albrecht continues to work for Redwave, he provides services to Jeb 2016 through his consulting firm, Albrecht Public Relations, LLC.").

<sup>28</sup> RTR Resp. at 2.

<sup>29</sup> 52 U.S.C. § 30116(a), (f).

<sup>30</sup> *See* 52 U.S.C. § 30118(a); 11 C.F.R. § 114.2(a); Advisory Op. 2010-11 (Commonsense Ten).

<sup>31</sup> *See* 52 U.S.C. § 30125(e)(1).

<sup>32</sup> 52 U.S.C. § 30101(8)(A)(i).

<sup>33</sup> 52 U.S.C. § 30116(a)(7)(B)(i)-(ii); *see also* 11 C.F.R. §§ 109.20, 109.21(b).

<sup>34</sup> 11 C.F.R. § 109.20.

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1 creation, production, or distribution of the communication.<sup>40</sup> The conduct prong is not satisfied  
2 if a commercial vendor has established and implemented a written firewall policy that meets  
3 certain requirements.<sup>41</sup>

4 Here, Respondents do not dispute that the Mailers satisfied the payment and content  
5 prongs.<sup>42</sup> RTR's August 21, 2015 Independent Expenditure Report — in conjunction with its  
6 tweets announcing the two Mailers — indicates that RTR paid for the two communications.<sup>43</sup>  
7 Moreover, the Mailers satisfy the content prong because RTR reported the communications as  
8 independent expenditures, *i.e.*, they contained express advocacy.<sup>44</sup>

9 As to the conduct prong, the Complaint alleges that Kochel and Albrecht's work with Jeb  
10 2016 would have "made them privy to information about Mr. Bush's campaign plans, projects,  
11 activities, and needs" and infers that such information "was material to the creation, production,  
12 or distribution of the Mailers and was conveyed or used by Redwave in the Mailers."<sup>45</sup>  
13 Respondents deny that any information was shared<sup>46</sup> and RTR asserts that "Redwave's work for

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<sup>40</sup> *Id.* § 109.21(d)(4)(i)-(iii).

<sup>41</sup> *Id.* § 109.21(h). A firewall policy satisfies this "safe harbor" if it (1) is designed and implemented to prohibit the flow of information between employees or consultants providing services for the person paying for the communication and those employees or consultants currently or previously providing services to the candidate who is clearly identified in the communication, or that candidate's authorized committee, the candidate's opponent, the opponent's authorized committee or a political party committee; and (2) is described in a written policy distributed to all relevant employees, consultants and clients. *Id.* § 109.21(h)(1)-(2). This safe harbor does not apply if specific information indicates that, despite the firewall, material information about the candidate's campaign plans, projects, activities or needs was used or conveyed to the person paying for the communication. *Id.* § 109.21(h).

<sup>42</sup> *See* RTR Resp. at 1-2.

<sup>43</sup> 48-Hour Rpt. of Independent Expenditures, Right to Rise USA (Aug. 21, 2015), <http://docquery.fec.gov/pdf/074/201508219000927074/201508219000927074.pdf#navpanes=0>.

<sup>44</sup> *See id.*; 11 C.F.R. § 109.21(c)(3).

<sup>45</sup> Compl. at 9-10.

<sup>46</sup> RTR Resp. at 2-3; Jeb 2016 Resp. at 3.

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1 services previously provided to the campaign by the vendor.<sup>52</sup> Rather, the Complaint uses  
2 Kochel and Albrecht's connections to Redwave to make an inference that RTR and Jeb 2016  
3 engaged in conduct that resulted in the Mailers being coordinated. Respondents, however,  
4 directly deny the Complaint's argument by asserting that Kochel took a formal leave of absence  
5 from Redwave prior to this time, and provided no consulting services to Redwave or its clients  
6 during his leave of absence.<sup>53</sup> Similarly, Jeb 2016 asserts that Albrecht personally worked solely  
7 on the "candidate side" of Redwave's practice during this time, and thus would have had no role  
8 in the "independent side" services provided to RTR.<sup>54</sup> In light of the specific denials provided  
9 by Respondents, we do not believe that the limited facts provided by the Complaint support a  
10 reason to believe finding that RTR made impermissible in-kind contributions to Jeb 2016 in  
11 connection with the Mailers.

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13 , we recommend that the Commission take no action at this  
14 time on the Complaint's allegations.

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<sup>52</sup> See 11 C.F.R. § 109.21(d)(4)(iii).

<sup>53</sup> RTR Resp. at 3.

<sup>54</sup> Jeb 2016 Resp. at 2.

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**IV. RECOMMENDATION**

1. Take no action at this time with regard to the allegations in the Complaint.

Lisa J. Stevenson  
Acting General Counsel

June 21, 2018  
Date

Kathleen M. Guith by MA  
Kathleen M. Guith  
Associate General Counsel for Enforcement

Mark Allen  
Mark Allen  
Assistant General Counsel

Christopher L. Edwards  
Christopher L. Edwards  
Attorney